

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

IGOR MALENKO,)	
)	
Plaintiff,)	
)	
v.)	Docket no. 2:11-cv-250-GZS
)	
LORI HANDRAHAN,)	
)	
Defendant.)	

PROCEDURAL ORDER & REPORT OF CONFERENCE

On April 10, 2012 at 9:45 AM, the Court held a conference of counsel. Attorney Michael Waxman appeared for Plaintiff. Attorney Judy Potter appeared for Defendant. Attorney Potter specifically indicated that she has forwarded copies of her March 19, 2012 Motion to Withdraw to Defendant Lori Handrahan. Attorney Potter also indicated that she repeatedly had attempted to contact Defendant by mail and e-mail prior to the conference. In short, Defendant has received notice of Attorney Potter's pending motion to withdraw and today's conference. Attorney Potter further indicated she has received no response of any kind from Defendant. As a result, Defendant has taken no position on the pending motion to withdraw.

As a result of the conference, the Court hereby ORDERS the following:

- (1) Pursuant to Federal Rule of Civil Procedure 12(h)(3), an evidentiary hearing will be held on the issue of subject matter jurisdiction. Based on the current record, it is not clear that Defendant Lori Handrahan was, in fact, domiciled in the District of Columbia at the time this action was filed. See Rodriguez v. Señor Frog's De La Isla, Inc., 642 F.3d 28, 32-34 (1st Cir. 2011); Bank One, Texas, N.A. v. Montle, 964 F.2d 48, 49-55 (1st Cir. 1992). The hearing on subject matter jurisdiction is set for May 11, 2012 at 1:00 PM. The Court has reserved two hours for this hearing. The parties are required to provide the Court with copies of any exhibits they intend to offer at the hearing no later than noon on May 10, 2012. Both Plaintiff and Defendant shall appear in-person for this hearing.

- (2) The Court RESERVES RULING on Attorney Potter's Motion to Withdraw (Docket # 11). If the Court determines that there is subject matter jurisdiction over this action after the May 11th hearing, it will then rule upon the Motion to Withdraw. Until such a ruling is issued, Attorney Potter remains counsel of record for Defendant in accordance with Maine Rule of Professional Conduct 1.16(c).
- (3) The Court has CANCELLED the Final Pretrial Conference set for April 11, 2012. However, Attorney Potter is hereby ORDERED to file a final pretrial memorandum on behalf of Defendant on or before April 17, 2012 at noon. The parties are hereby NOTIFIED that if the Court determines that it has subject matter jurisdiction, this matter will be set for a final pretrial conference before this judge as soon as practicable. This case will be removed from the May Trial List but will be tentatively placed on the June Trial List. Therefore, the parties shall be prepared to select a jury in this case on June 4, 2012. To the extent any party or counsel has good cause to seek protection from specific trial dates in June, a motion for protection shall be filed no later than May 10, 2012.
- (4) Attorney Potter shall appear at the next hearing in this matter prepared to place on the record all of her attempts to contact Defendant and to notify Defendant of this Order and the May 11, 2012 hearing. Defendant has right to be represented at the hearing by qualified counsel of her own choosing. However, in the absence of another qualified attorney filing a substitute appearance, Attorney Potter shall appear at the May 11th hearing for Defendant. Attorney Potter is specifically directed to notify Defendant that upon a finding of subject matter jurisdiction, this matter will proceed to trial in June 2012. As a result, Defendant should be searching out additional counsel who would be available to represent her at trial in anticipation that Attorney Potter may be allowed to withdraw. Defendant is hereby further notified that failure to appear at any hearing or trial will result in the forfeiture of her right to be heard on the issues then before the Court. Additionally, failure to comply with any order of this Court may result in sanctions, including the entry of default.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 10th day of April, 2012.